
(1979) 07 CAL CK 0002

Calcutta High Court

Case No: None

Manindra Nath Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 12, 1979

Acts Referred:

- Constitution of India, 1950 - Article 226
- Foreign Exchange Regulation Act, 1973 - Section 17, 5, 51
- Income Tax Act, 1961 - Section 148, 246

Hon'ble Judges: Pradyot Kumar Banerjee, J; Bankim Chandra Ray, J

Bench: Division Bench

Judgement

Bankim Chandra Ray, J.

This appeal under Clause 15 of the Letters Patent is directed against the judgment and order of M.N. Roy, J., made in Civil Rule No. 52(W) of 1974 discharging the Rule.

2. The petitioner was an employee of the respondent No. 1 and was at the relevant time working as Chief Inspector, Food and Supplies at Bonga-on in the District of 24 Parganas. On May 4, 1978, the petitioner was served with a charge-sheet alleging inter alia:

Charge No. 1: That while employed as Inspector, F. & S. Ranaghat, Nadia during the year 1959, you had been in possession of pecuniary assest to the extent of Rs. 10,700 which is disproportionate to the known sources of your income and which you failed to satisfactorily account for and may be presumed to have been acquired by you by corrupt means or otherwise obscuring (sic) your power as public servant.

Charge No. 2: That while employed as Inspector, F. & S., Ranaghat, Nadia, you purchased and acquired a building at Sidnanlapara, Ranaghat (Vide Ded No. 1, 2033 dt. 4-3-59) in the name of your dependant wife Sm. Proima Rani Ghosh at a very low price and that you concealed this fact of acquisition by not wilfully obtaining prior

permission of the Government to acquire such a low price and that you thus wilfully violated the provision of Rule No. 15(2) of the West Bengal Govt. Servants' Conduct Rules, 1959.

Charge No. 3: That while employed as Inspector, F. & S. Ranaghat, you gave loan of a big amount of Rs. 57,000 to your relative in 1968 without having any prior sanction of the Government and that you thus violated the provision of Rule No. 14 of the West Bengal Government Servants' Conduct Rules, 1959.

3. The petitioner was directed to submit his written statement of defence to one Mr. T.C. Guha, District Controller of Food and Supplies, Nadia who was appointed as enquiry officer for holding enquiry into the said charges against the petitioner by the respondent No. 2, the Director, District Distribution Procurement and Supply. This charge-sheet has been annexed as Annexure "A" to the petition. The petitioner submitted his written statement of defence denying all those charges and praying for the assistance of a lawyer to represent him in the disciplinary proceeding. The petitioner sent a letter dated August 17, 1970 to the enquiring officer praying for examination of his mother who was a vital witness as she was keeping indifferent health. He also requested the enquiring officer for expediting the enquiry. This prayer was rejected and the petitioner was informed of the same by the enquiring officer by his letter dated 11th December, 1971. The petitioner again after a lapse of more than one year requested the enquiring officer by his letter dated 21st December, 1971 to examine his mother who was material defence witness at her residence in Calcutta as she was bedridden owing to various ailments. No reply was received to the said letter by the petitioner. The petitioner was informed by the enquiry officer that he would not be permitted to engage a lawyer by letter dt. February 23, 1972. Witnesses were examined and cross-examined and the petitioner was eagerly waiting for the report of the enquiring officer. But on March 31, 1973, another charge-sheet containing identical charges was served on the petitioner by the respondent No. 2. The charges are:

Article of charge 1. That Shri Manindra Nath Ghose, in the year 1959, while functioning as Inspector, Food & Supply, Ranaghat (Nadia), was found to have disproportionate assets to the extent of Rs. 27,300 in the shape of cash of Rs. 10,700 and house property in Ranaghat the valuation of which would be Rs. 16,600 and as such his conduct is unbecoming of a Government servant.

Article of charge 2. That the said Shri Manindra Nath Ghosh while functioning as Chief Inspector of Food & Supplies, Krishnanagar, Nadia, in the year 1968, had lent a sum of Rs. 5,703 to his son-in-law without any prior sanction and this amount of loan not being a small amount, he violated Rule 14 of the West Bengal Government Servants' Conduct Rules, 1959.

4. A copy of the charge-sheet has been annexed as Annexure "I" to the petition. The respondent No. 2 by a letter dated 31st March, 1973, appointed Sri Coari, Vigilance

Commission, West Bengal as Enquiring Authority. One Sri T.K. Mitra, Deputy Superintendent of Police, Anti-Corruption Bureau, Vigilance Commission was authorised to represent the case before the Enquiring Authority on behalf of the Disciplinary Authority.

5. The first charge-sheet was withdrawn by the disciplinary authority by letter dated April 14, 1973. The petitioner on April 12, 1973, submitted his explanation to the second charge-sheet refuting all the charges. It was also submitted that the initiation of the de novo enquiry proceeding on the basis of the second charge-sheet was unjust and opposed to the principles of natural justice. It was also submitted that the report of the previous enquiry might go in favour of the petitioner and as such the said proceeding was dropped and fresh proceeding was initiated on the basis of the second charge-sheet in order to have the charges against the petitioner established and to have him punished. The petitioner also prayed for being represented by a lawyer which was rejected. The petitioner again requested him to allow him to have the assistance of Sri C.B. Chakraborty, District Controller, Food and Supplies, Howrah as defence helper in the departmental proceeding by a letter dated April 28, 1973 which was marked as annexure "O" to the petition. He also intimated the enquiring officer by letter dated 16th April, 1973 that all the relevant documents in support of his defence have been filed already in the earlier proceeding and as such submission of any document in the second proceeding does not arise. After the close of the evidence the petitioner filed a written argument in support of the defence case to the enquiring officer on August 10, 1973. It was submitted that no reason has been assigned for dropping the earlier proceeding and initiating the second proceeding on identical charges. The initiation of the second proceeding was challenged as not bona fide but it was made with a motive to have the petitioner punished and for that purpose the Disciplinary Authority appointed Mr. Coari, an officer of the Vigilance Commission, West Bengal as enquiring officer in the departmental proceedings to have the charges against the petitioner proved.

6. The enquiring officer submitted his report holding that both the charges against him have been proved. The Disciplinary Authority, the respondent No. 2, agreed with the findings of the enquiring officer and issued on 25th February, 1974 a second show-cause notice to the petitioner. This has been annexure as annexure "S" to the petition.

7. The petitioner challenged the second show-cause notice in an application under Art. 226 of the Constitution and obtained the Civil Rule No. 2152(W) of 1974 and an order of interim injunction restraining the petitioner from giving effect to the departmental proceeding and in particular to the impugned notice dated 28th February, 1974 for a limited period which was subsequently extended till the disposal of the Rule. The learned single Judge discharged the Rule. The learned single Judge has held that the writ application at the second show-cause stage is not

maintainable and the challenge regarding non-compliance with or violation of the principles of natural Justice in the enquiry proceeding can be urged at the final hearing stage or at the time of hearing of the statutory appeal. It has been further held that as no final hearing stage has been reached nor any penalty has been imposed the second show-cause notice as such cannot be challenged in a writ petition.

8. Feeling aggrieved by this determination the instant appeal has been preferred by the petitioner.

9. Mr. Noni Coomer Chakravarti, learned advocate for the appellant submitted inter alia that the charge-sheet was issued with a closed mind by the Disciplinary Authority, that there has been violation of the Rules of natural justice in proceeding with the enquiry into the charges as the petitioner's prayer for assistance of the lawyer was rejected though the case was a complicated one, the petitioner's prayer for examination of his mother who was a very vital witness to prove the defence case was rejected by the enquiring authority. Mr. Chakravarti has also submitted that the initiation of the second proceeding without dropping the first proceeding and without recording any reason why the first proceeding initiated on identical charges and enquiry into those charges though completed after a protracted hearing was withdrawn. It has been submitted that the initiation of the second proceeding was not made bona fide and the same was initiated with a motive to have the charges against the petitioner proved and to have him punished as in the first proceeding the charges probably might not have been proved against him. Mr. Chakravarti further submitted that the second show cause notice against which the writ petition on the above grounds had been moved is maintainable and the decision of the learned single Judge is not in accordance with law in discharging the Rule as not maintainable Mr. Chakravarti had cited a large number of decisions in support of his contention.

10. Mr. A.P. Sarkar learned advocate for the respondents has submitted firstly, that the writ petition against the second show-cause notice is not maintainable inasmuch as it is well-settled that the delinquent employee at the second show cause stage cannot only show that the punishment proposed to be imposed is not warranted or too severe, but he can also show that the charges against him have not been proved. Mr. Sarkar secondly, submitted that the right to challenge the second show-cause notice is not an absolute right as held by the learned single Judge and on a consideration of the application on merits the learned Judge held that there had been no violation of the principles of natural justice and initiation of the second proceeding was not bad. There is no infirmity in the findings of the learned Judge.

11. The only question that needs to be considered and decided in the case is whether the second show-cause notice can be challenged in an application under Article 226 of the Constitution and whether such an application is maintainable even though no final order has been passed pursuant to the second show-cause notice

and no penalty has been imposed on the delinquent employee. In the instant case the second show-cause notice has been challenged in the writ petition on the grounds inter alia that the charges were framed with a closed mind and that the principles of natural justice have been violated in rejecting the petitioner's prayer for being represented by a lawyer and also in not examining the mother of the petitioner who is a defence witness in spite of repeated prayers made by the petitioner apart from other irregularities and illegalities in the initiation of the second proceeding with- out dropping the first proceeding and also without recording reasons for dropping the first proceeding which was concluded after protracted hearing. In [Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others,](#) , the delinquent employee was served with a notice to show-cause why disciplinary action would not be taken against him for certain items of misconduct imputed to him. The Secretary of the Bank enquired into those allegations and thereafter a second show-cause notice was issued to him as to why his next increments would not be stopped by way of punishment. The Secretary after receiving his explanation accepted the same and dropped the proceedings. Thereafter the Managing Director on taking the view that the Secretary had no power to impose punishment on the employees of the bank issued a fresh memorandum intimating the employee that he was provisionally of the view to impose upon him a penalty of dismissal from service and asked him to show-cause why he should not be dismissed from the bank-services. This show-cause notice was challenged by a writ petition. It has been observed by His Lordship Krishna Iyer, J. who spoke for the Supreme Court:

No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.

The appeal was accordingly dismissed.

12. This very question was also raised in the case of Sunil Kumar Mukherjee v. State of West Bengal and Ors. (1976) 2 C.L.J. 529. In that case the petitioner challenged the second show-cause notice on the ground that the charge-sheet was issued by the authority with a closed mind and the principles of natural justice have been violated as the petitioner was not supplied with the copies of the deposition of all the witnesses examined in the preliminary investigation, the copies of the complaint made against him and of the report of the investigating officer and the petitioner was not allowed the assistance of a lawyer, etc. In that case preliminary objection was raised as to the maintainability of the writ petition on the ground that no penalty has been imposed on the petitioner and no final order was passed in the

said proceeding and reliance was placed in that connection on the decision of the Supreme Court in *Chatman Singh v. Registrar of Cooperative Societies, Punjab* (supra). It has been observed by M.M. Dutt, J.--"If the petitioner's challenge has been directed only against second show-cause notice as in the case before the Supreme Court, in that case, the writ petition would have been dismissed, but as other challenges have been made which go to the root of the matter it cannot be said without considering the contentions of the petitioner that the writ petition is not maintainable as no punitive action has yet been taken against him. In these circumstances, the preliminary objection is overruled." This decision of the learned Judge was affirmed on appeal by the Division Bench in (1977) CHN 1014 and to which one of us was a party though the Division Bench on other points reserved the findings of the learned single Judge. The learned single Judge in the instant case has observed considering this decision that if this case comes within the purview of the determination of the original and appellant decisions in the case of *Sunil Kumar Mukherjee v. State of West Bengal and Ors.* (suprat) there would be no difficulty in having the same disposed of by holding the same to be maintainable as the petitioner in a way had challenged the validity and bona fide of not only the charges but also the way and the manner the enquiry was conducted and so also the conduct of the enquiry officer and violation of the principles of natural justice. The learned Judge has further observed that the difficulty has been created by an unreported Bench decision of this Court made in the case of *Jitendra Kr. Banerjee v. State of West Bengal and Ors.* FMA 137 of 1972 and by another decision of this Court in the case of *Sudhir Kr. Chakravarti v. State of West Bengal and Ors.* (1976) 1 C.L.J. 483. The learned Judge has further observed if there are grave irregularities unless the petitioner has present grievance by the making of a final order he would not be entitled to make an application. The facts of the case in *Sudhir Kr. Chakravarti v. State of West Bengal and Ors.* (supra) are totally different from the facts of present case. In the case the writ petition was filed challenging the validity of the order of dismissal passed in the departmental proceeding unlike the facts of the present case and as such this case is of no assistance for the point in controversy. The learned single Judge has referred to the observations made in the above case to the effect that at the second show-cause stage cause can be shown not only against the action proposed to be taken against him but also against the validity and correctness of the findings recorded by the enquiring officer and provisional action proposed by the Disciplinary Authority. In *Jitendra Kr. Banerjee v. State of West Bengal and Ors.* (supra) a second show-cause notice was challenged in an application under Article 226 of the Constitution. The appeal which arose out of the said proceeding was dismissed on the ground that the same was premature. No reason was recorded for the said finding made by the learned Judges.

13. In [Ananta Prosad Sett Vs. State of West Bengal and Others](#), the petitioner who is a Government employee challenged the second show-cause notice on the grounds that there was violation of the principles of natural justice as no assistance

of lawyer was given to him nor certain copies of material documents were supplied though the same were relied upon by the enquiry officer and he was not given opportunity in making representation against the finding of charges other than those found to have been established by the enquiring officer and also against the imputations on the basis of the character roll taken into consideration. It was held that the principles of natural justice were violated and the rule was made absolute quashing the second show-cause notice. This determination was made by a Division Bench of this Court.

14. In [The Director, Enforcement Directorate Cabinet Secretariat Deptt. Personnel and A.R. Government of India and Others Vs. Saroj Kumar Bhotika and Another](#), there was a circular by the Reserve Bank of India to the effect that foreign companies proposing to sell their Indian assets have to obtain the prior approval of the Reserve Bank before the effecting of such sales if repatriation of the sale proceeds over a certain amount was involved. Accordingly the National and Grindlays Bank applied to the Reserve Bank of India for permission for sale of certain number of equity shares held for Ralli International, a foreign company, in the Oriental Carpet Manufacturers, an Indian company. The Reserve Bank granted the permission on condition that no shares shall be allotted to any larger industrial house and persons connected therewith. The respondent Saroj Kumar Bhotika purchased 50 shares of the said O.C.M. Company and paid a sum of Rs. 12,250 as fixed. A notice was issued on the respondent to show-cause why an adjudication proceeding u/s 51 of the Foreign Exchange Regulations Act, 1973 should not be drawn against him for contravention of Section 5/17 of the Foreign Exchange Regulations Act, 1947. The respondent challenged the said notice by a writ petition. An objection was raised on behalf of the appellant that application was premature and the same was not maintainable. As against this it was contended that "(i) there is no rational and proximate nexus between the object of the enactments (i.e., Foreign Exchange Regulations Act, 1947 or 1973) and the impugned condition, namely, that the shares cannot be sold to larger industrial houses or a person connected therewith, (ii) The condition that is imposed must, in order to be valid, be clear and unequivocal and must not be vague, uncertain or ambiguous." It has been held by a Division Bench of this Court presided over by his Lordship S.P. Mitra, C.J. "If redress can be had through the law under which the action under challenge is proposed to be taken a writ application could not be entertained. But when the challenge is such as cannot be determined by the authority appointed to take action, the writ jurisdiction of the High Court remains unimpaired. The writ petition was held maintainable. The above observations have been made while considering the question if Article 226(3) of the Constitution would operate as a bar to the maintainability of the writ petition as there is a statutory remedy by way of appeal against the order passed in the said adjudication proceedings. In that case it was also urged relying on the decision of the Supreme Court in Channan Singh's case (supra) that the application was not maintainable as no final order was passed in the

adjudication proceeding and there has been no excess of jurisdiction or the usurpation of jurisdiction. This contention was, however, accepted by the Division Bench.

15. A notice to show-cause why adjudication proceeding u/s 51 of the Foreign Exchange Regulations Act, 1947/1973 should not be started was challenged in an application under Article 226 of the Constitution in *Gulab Kaiuar v. Enforcement Director* AIR 1977 Cal 385. Mr. Justice T. K. Basil relying on the above decision of the Division Bench in *Director, Govt. of India's case (supra)* negated the preliminary objection that the application was premature and not maintainable in view of the provisions of Article 226(3) of the Constitution and held that the statutory remedy by way of appeal was not an adequate remedy for redressal of the grievances complained of by the petitioner. In the case reported in *United Commercial Bank v. Director, Enforcement Directorate* (1978) 2 C.L.J. 75, two notices to show-cause u/s 23D of Foreign Exchange Regulations Act, 1947 and u/s 51 of Foreign Exchange Regulation Act, 1973 had been challenged in an application under Article 226 of the Constitution on the ground that the adjudicating authority had no jurisdiction to issue those notices. It was held that the writ petition was maintainable as the alternative remedy of appeal under the Act could not afford adequate relief as the challenge was to the maintainability of the proceedings on the ground that the adjudicating authority had no jurisdiction on the face of the show-cause notices to initiate the adjudication proceedings.

16. A notice u/s 148 of the Income Tax Act, 1961 was challenged in a writ petition as without jurisdiction. It was held that the remedy by way of appeal u/s 246 of the Income Tax Act does not provide any remedy in this case. The remedy by way of suit cannot be an alternative remedy as it is not an immediate remedy but a remote remedy. If the suit is considered to be an alternative remedy then no petition for redress under Article 226 of the Constitution would be maintainable. The writ petition was, therefore, held maintainable. This decision has been reported in [Mohindra Mohan Sirkar Vs. Income Tax Officer and Another](#), .

17. In [Collector of Customs and Another Vs. Jaykrishna Saha and Another](#), , a writ petition was moved against a notice asking to show-cause why certain pieces of sovereign should not be confiscated u/s 8(5) of Gold Control Act, 1968. It was held by this Court that notice being without jurisdiction challenge can be thrown in a writ petition against such a notice.

18. F.M.A.T. No. 1102 of 1973 and F.M.A. 396 of 1977 P.N. Murti v. Railway Board and Ors., arose out of a determination made by the learned single Judge discharging the Rule obtained against the second show-cause notice on the technical ground that the writ petition abated u/s 58(2) of the Constitution 42nd Amendment Act, 1976. It was argued in the appeal that there had been a violation of the principles of natural justice inasmuch as the enquiring officer allowed the representing officer to file a written brief under Rule 9(16) of the Railway Servants' (Discipline and Appeal Rules)

without supplying written brief of their argument to the delinquent officer. It was held relying on the decision of this Court in [The Collector of Customs and Others Vs. Md. Habibul Haque,](#) , where similar questions arose that the proceedings had become invalid as the appellant was not served with the written brief of argument of the presenting officer and as such the second show-cause notice and the report of the enquiry officer was quashed.

19. On a conspectus of the above decisions cited at the Bar the legal position is quite clear that if the second show-cause notice is impeached in the writ petition on the grounds, inter alia, that the charge-sheet was issued by the disciplinary authority with a closed mind, that the charge-sheet was issued by an authority not authorised to issue the same, that copies of the documents relied upon in the enquiry proceeding have not been given to the delinquent employee to enable him to explain the same, the confidential character roll which was considered by the enquiry officer in coming to his finding without communicating the same to the delinquent employee, the delinquent employee was not permitted to examine himself as a defence witness and to file relevant documents in his possession, that he was not allowed to be represented by a lawyer though prayed for in a complicated case, the copy of the enquiry report was not sent to him along with second show-cause notice or the findings of the disciplinary authority with regard to the charges with respect to which he differed from the findings of the enquiry officer was not given to the delinquent employee along with the second show-cause notice, or the condition precedent as provided in the Act has not been complied with before issuing the show-cause notice, the petition is maintainable. In other words, where there has been a violation of the principles of natural justice an application under Article 226 of the Constitution challenging the second show-cause notice on the above grounds is maintainable and such an application cannot be rejected on the preliminary ground that the application was premature as no final order has been passed and no penalty or punishment has been imposed in the said proceeding by which the petitioner can be aggrieved. In Channan Singh's case (supra) the disciplinary proceeding which was initiated by the Secretary of the Co-operative Bank was dropped after accepting the explanation submitted by the appellant, Channan Singh against the second show-cause notice. The Managing Director of the Bank being of the view that the Secretary has no power to impose punishment on the employees of the bank issued a fresh memorandum asking to show-cause why a penalty of dismissal from the bank services should not be imposed. Against this notice an application was moved which ultimately came up in appeal before the Supreme Court. The challenge was directed only against the second show-cause notice and it does not appear that there was any challenge on the ground that the charges were issued by an authority not competent to issue the same nor there was any challenge that there was any violation of the principles of natural justice in the enquiry proceeding. It was held by the Supreme Court that the application was premature as no final order was made nor any punitive action had

been taken on the basis of the said notice. On a close scrutiny of the above decisions the following inferences can be made. An application under Article 226 of the Constitution challenging the second show-cause notice only impeaching that the charge-sheet has been made with a closed mind or has been made by person not authorised and/or that there has been a violation of the principles of natural justice is not maintainable but where the second show-cause notice is challenged on the grounds that the charge-sheet has been issued with a closed mind, that the principles of natural justice have been violated the writ petition is maintainable even though no final order has been passed and no punitive action has been taken pursuant to the show-cause notice. We, therefore, hold that an application against the second show-cause notice is maintainable if the petition the impugned notice has been impeached on the grounds that the charge-sheet was framed with a closed mind, that there has been a breach of the principles of natural justice or there are other challenges going to the root of the matter. In the instant case the application has been moved against the second show-cause notice challenging that the charge-sheet was issued with a closed mind and that there had been a violation of the principles of natural justice in not allowing the petitioner to examine his mother as a vital defence witness and also in not allowing the petitioner to have assistance of lawyer to represent him in the enquiry proceedings. The writ application is, therefore, in our considered opinion, cannot be dismissed on the preliminary ground as not maintainable and the decision of the Supreme Court in Channan Singh's case cannot be called in aid as the facts of the instant case and the points raised are different from those raised and considered in the said case. The learned single Judge has observed that ordinarily an application against charge-sheet and second show-cause notice when no finality has been reached would not be maintainable. But an application against the issuance of a charge-sheet may be maintainable if the charges are found to be groundless or void ab initio or when the same has been issued without jurisdiction or in capricious, mala fide use of power or on baseless ground and there has been total non-application of mind. The learned single Judge also held that the right to maintain an application at the second show-cause stage is not absolute, but the same is subject to the principles as laid down in the cases cited above. The learned Judge further held that be that as it may these points regarding non-compliance with or violation of the principles of natural justice can be urged conveniently at the final hearing stage or at the time of hearing of the statutory appeal. That apart when no finality has yet been reached in the matter all points can be conveniently agitated in the statutory appeal or at the second show-cause stage and as such the learned Judge held that the application was not maintainable. We have already held on a consideration of the decision cited at the bar that the instant writ petition challenging the second show-cause notice on the grounds that the charge-sheet has been issued with a closed mind that there has been a violation of the principles of natural justice is maintainable though no final order has been passed.

20. It has been urged by Mr. Sarkar, learned advocate for the respondent that at the second show-cause stage the appellant has got ample opportunity to show-cause not only against the proposed punishment but also against the infirmity of the finding of the enquiry officer by pleading that the charges against him had not been proved at all. Mr. Sarkar, therefore, urged that the writ application had been rightly held to be not maintainable at the second show-cause stage. Undoubtedly it has been observed by Gajendragadkar, J. (as he then was) who spoke for the Supreme Court in *State of Assam v. Bimal Kumar Pandit* (supra) that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is finally taken against him. At the first stage of proceeding he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the said finding, the dismissing authority has to come to a tentative or provisional conclusion about the guilt of the officer as well as about the punishment which is proposed to be imposed. A show-cause notice is accordingly issued and the delinquent employee gets a second opportunity to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This decision has been followed by this Court in the case reported in *Sudhir Kr. Chakrabarti v. State of West Bengal*, (supra). The above pronouncement of the Supreme Court does not decide the question as to the maintainability of a writ petition against the second show-cause notice. As such this contention is overruled.

21. Mr. Sarkar has contended that the learned single Judge has also come to a finding on merits. We do not think it proper to decide the points raised on merits as the rule was discharged on the preliminary ground that the writ petition against the second show-cause notice was not maintainable.

22. For the reasons aforesaid we allow the appeal on setting aside the judgment of the learned Judge without any order as to costs. Let the rule be placed to the appropriate Bench for decision of the other points raised in the writ petition.

P.K. Banerjee, J.

23. I agree.